

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RETROSPECTIVE GOODS, LLC,	:
Plaintiff,	:
	: MEMORANDUM AND ORDER
– against –	: 20-CV-6201 (AMD) (RER)
T&M INVESTMENTS INTERNATIONAL,	:
LLC <i>et al.</i>,	:
Defendants.	:
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ANN M. DONNELLY, United States District Judge:

The plaintiff, Retrospective Goods, LLC commenced this action on December 22, 2020, against the defendant T&M Investments International, LLC, a Florida limited liability company. The plaintiff also named fifty John Does and ten fictitious business entities as placeholder defendants. The plaintiff seeks injunctive and monetary relief for false advertising, trade dress infringement and false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a); copyright infringement in violation of the Copyright Act of 1979, 17 U.S.C. §§ 501, et seq.; and deceptive acts and practices in violation of the New York General Business Law, N.Y. Gen. Bus. Law §§ 349-50. (ECF No. 1.)

On May 20, 2022, Magistrate Judge Ramon E. Reyes issued a Report and Recommendation in which he recommended that the Court dismiss this case without prejudice because the plaintiff did not timely serve the defendant under Federal Rule of Civil Procedure 4(m). (ECF No. 23.) Judge Reyes made this recommendation “[a]fter observing deficiencies in Plaintiff’s service of process[.]” (*Id.* at 2.) Previously, Judge Reyes ordered the plaintiff to show cause in writing why a report should not be issued recommending that the action be dismissed

without prejudice for insufficient service of process. (ECF No. 21.) The plaintiff filed a timely response to Judge Reyes on April 8, 2022. (ECF No. 22.)

Judge Reyes reviewed the plaintiff's submission and concluded that the plaintiff had failed to serve the defendant properly under Rule 4(m) and had not demonstrated good cause for that failure. (ECF No. 23 at 2.) Specifically, Judge Reyes determined that the plaintiff's "nail-and-mail" service on the last known address of the defendant's registered agent was improper under New York law because N.Y. C.P.L.R. § 308(4) authorizes "nail-and-mail" service only when defendants are natural persons. (*Id.* at 5.) Judge Reyes also determined that the plaintiff had not effectuated service under Florida law, citing a lack of sufficient proof of service in the plaintiff's returned summons. (*Id.* at 6-7.)

Finally, Judge Reyes found that "a discretionary extension of time to serve [was] not warranted under the circumstances," because the plaintiff could re-file its claims, and because there was no evidence that the defendant had any actual knowledge of the plaintiff's lawsuit. (*Id.* at 9-10.) No objections have been filed to the Report and Recommendation, and the time for doing so has passed.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks omitted) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)).

CONCLUSION

I have reviewed Judge Reyes' well-reasoned Report and Recommendation and find no error. Accordingly, I adopt the Report and Recommendation in its entirety. The plaintiff's case is dismissed, without prejudice, for a failure of timely service on the defendant under Rule 4(m). The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
June 15, 2022